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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/574,310

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Rafael Posse Espinosa

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MCDERMOTT, WILL & EMERY
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SAN DIEGO, CA 92130-2047

EXAMINER

DOUKAS, MARIA E

ART UNIT

PAPER NUMBER

3767

NOTIFICATION DATE

DELIVERY MODE

01/19/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

SIP_Docket@mwe.com

Office Action Summary	Application No. 10/574,310	Applicant(s) POSSE ESPINOSA, RAFAEL	
	Examiner MARIA E. DOUKAS	Art Unit 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/9/2009 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 7 recites the limitation "the plurality of support members" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim, as claim 7 depends from claim 1 in which only one support member is claimed. Claim 5 has the limitation that the support member comprises a plurality of support members.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,807,837 to Gawlik (Gawlik).

In Reference to Claim 1

A portable container system (Figure 1) for application of enemas (the device is capable of holding an enema solution, and according to MPEP §2114, “a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus if the prior art apparatus teaches all the structural limitations of the claim”) comprising: a container (containers 16) for storing the enema solution (the structure of the containers is capable of storing an enema solution, and there is therefore no patentable distinction in structure between that taught by the prior art and that claimed - MPEP §2114); a hose connected to the container and connected to a bottom face of the container (Figure 1, wherein the hose is connected to the bottom of container 16 and this portion that the hose connects to can therefore be defined as its bottom face); and a supporting structure (stand 10) including a top plate (support arms 14) on which the container is disposed (Figure 1), a

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base plate (leg support 20), and a plurality of support members (tubular sections 12) disposed between the top and bottom plate (Figure 1).

In Reference to Claim 2

The device of claim 1 (see above) wherein the supporting structure (stand 10) is configured to hold the container (16) at a height to cause a difference in pressure between the container and an intestine (the structure taught by the prior art is capable of performing this function, and there is no patentable distinction in structure between that claimed and that taught by the prior art - see MPEP §2111.04).

In Reference to Claim 3

The device of claim 1 (see above) wherein the supporting structure is configured to be disassembled (Figure 2).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 1, 3, 4, 6, and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. Re 39930 to Moon (Moon) in view of U.S. Patent No. 6,588,720 to Revette (Revette).

In Reference to Claim 1

Moon teaches a container (reservoir 18) for storing an enema solution and a hose (tube 26) connected to the bottom face of the container (Figures 1 and 3, wherein in Figure 3 it can be seen that the tube 26 runs into the container and connects to the bottom face of the container within the container's interior. This therefore meets the claim limitations of having a hose connected to a bottom face of the container). Moon further teaches wherein the container and hose can be attached to the wall or ceiling and are not limited to being placed on top of a reservoir 14 as pictured in Figure 1 (col. 3, lines 57-58). Moon fails to teach a supporting structure. Revette teaches a portable container system (Figure 1) comprising: a container (cooler 12) and a supporting structure including a top plate (plate 20) on which the container is disposed (Figure 1), a base plate (40), and a support member (frame 38) for connecting the top and bottom plates (Figure 2), wherein the structure is capable of being mounted on a vertical surface (Figures 1-2). Revette teaches this supporting structure in order to provide a support structure for a container that enables the container to be moved through various vertical positions to the desired height (abstract; Figure 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Moon to have the support structure

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as taught by Revette to hold the reservoir 18 in order to provide a support structure for a container that enables the container to be moved through various vertical positions to the desired height so that optimal pressure differences for applying the enema can be achieved (abstract; Figure 2). The support structure of Revette is designed to be attached to a vertical surface, and Moon teaches that the reservoir holding the enema solution can be attached to a wall (col. 3, lines 57-58). Therefore, by using the support structure of Revette to hold the reservoir 18 on the top plate 20, the reservoir will be capable of being moved into different vertical positions to provide the necessary positioning for optimal pressure difference between the container and intestine.

In Reference to Claims 3 and 4

Moon in view of Revette teaches the device of claim 1 (see above). Revette further teaches wherein the supporting structure is capable of being disassembled as fasteners are taught for connecting the base 20 to frame members 28, which are secured to arms 30, and fastening means are taught for connecting the support structure to a vertical surface. Further, although the structure is shown as integral, it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art (see MPEP §2144.04). The supporting structure would be capable of fitting inside the reservoir 18 when it is disassembled into separate pieces, and there is no patentable distinction in structure claimed to distinguish over the prior art (see MPEP §2111.04).

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In Reference to Claim 6

Moon in view of Revette teaches the device of claim 1 (see above). Revette further teaches wherein the top plate (plate 20) has a fissure (46) serving as a guide for a cable 42. The structure of this fissure 46 would be capable of serving as the guide for the tube 26 of Moon, and there is therefore no patentable distinction in structure between that claimed and that taught by the prior art.

In Reference to Claim 8

Moon in view of Revette teaches the device of claim 4 (see above). Although only one hose (tube 26) is taught by the prior art, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Moon in view of Revette to have a plurality of hoses, as it has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art (see MPEP §2144.04).

In Reference to Claim 9

Moon teaches a container (reservoir 18) for storing an enema solution and a hose (tube 26) connected to the bottom face of the container (Figure 1 and 3, wherein in Figure 3 it can be seen that the tube 26 runs into the container and connects to the bottom face of the container within the container's interior. This therefore meets the claim limitations of having a hose connected to a bottom face of the container). Moon further teaches wherein the container and hose can be attached to the wall or ceiling

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and are not limited to being placed on top of a reservoir 14 as pictured in Figure 1 (col. 3, lines 57-58). Moon fails to teach a supporting structure. Revette teaches a portable container system (Figure 1) comprising: a container (cooler 12) and a supporting structure including a top plate (plate 20) on which the container is disposed (Figure 1), a base plate (40), and a support member (frame 38) for connecting the top and bottom plates (Figure 2), wherein the structure is capable of being mounted on a vertical surface (Figures 1-2). Revette teaches this supporting structure in order to provide a support structure for a container that enables the container to be moved through various vertical positions to the desired height (abstract; Figure 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Moon to have the support structure as taught by Revette to hold the reservoir 18 in order to provide a support structure for a container that enables the container to be moved through various vertical positions to the desired height (abstract; Figure 2). The support structure is designed to be attached to a vertical surface, and Moon teaches that the reservoir holding the enema solution can be attached to a wall (col. 3, lines 57-58). Therefore, by using the support structure of Revette to hold the reservoir 18 on the top plate 20, the reservoir will be capable of being moved into different vertical positions to provide the necessary positioning for optimal pressure difference between the container and intestine. Further, the structure of the prior art in the combination explained above is capable of having the hose and supporting structure fitting inside the reservoir 18 when the support structure is

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disassembled into separate pieces, and there is no patentable distinction in structure claimed to distinguish over the prior art (see MPEP §2111.04).

In Reference to Claims 10-11

Moon in view of Revette teaches the device of claims 1 and 9 (see above). Further, when the container 18 of Moon is placed within the support structure of Revette as described in the rejections above, the container will be disposed on a center axis of the structure in a vertical direction (see Revette, Figure 1 as illustration of how a container is held by the support structure).

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,807,837 to Gawlik (Gawlik).

In Reference to Claim 5

Gawlik teaches the device of claim 1 (see above) and further teaches wherein the support member comprises a plurality of support members (tubular sections 12). Gawlik fails to teach wherein each of the tubular sections has the same length. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the size of the tubular sections 12 to each have the same length, as a change in size is generally recognized as being within the level of ordinary skill in the art (see MPEP §2144.04).

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10. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,807,837 to Gawlik (Gawlik) in view of U.S. Patent No. 4,905,944 to Jost (Jost).

In Reference to Claim 7

Gawlik teaches the device of claim 1 (see above) but fails to teach a middle plate connected to the plurality of support member. Jost teaches an IV stand (Figure 1) that has a support member (main pole 10) connecting a top and bottom surface (arms 18 and base 8, respectively, Figure 1). Jost further teaches a middle plate (handle 70) connected to the support member in order to provide a handle for the IV stand to provide easier portability and motility of the stand (col. 2, lines 23-25).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the stand of Gawlik to have a handle as taught by Jost connected to the tubular section 12 in order to provide a handle for the IV stand to provide easier portability and motility of the stand (col. 2, lines 23-25).

Response to Arguments

11. Applicant's arguments filed 11/9/2009 have been considered but are not found persuasive. Applicant argues that Gawlik does not teach a top plate on which the container is disposed, but instead teaches hanging the container from a support arm. This is not found persuasive as the support arm 14 of Gawlik meets the structural claim limitations of being a top plate of the entire support structure seen in Figure 1.

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Furthermore, as seen in Figure 1, although the container 16 is hanged from this support arm, this also meets the claim limitation of having a “top plate on which the container is *disposed*.” The claim does not further limit the manner in which the container must be disposed on said top supporting arm and therefore having the container hang from this arm structurally meets a definition of disposed as being “placed or put on.” Also, applicant’s argument that the container 16 does not have a bottom face that the hose connects is not found persuasive. The hose connects to the container at the bottom (Figure 1) and the container will necessarily have a defined face at this connecting end serving to seal off the bottom portion of the container to form the enclosed structure that makes up the container itself.

Applicant's argument that Moon does not teach the hose connected to the bottom face of the container is not found persuasive for reasons discussed in the rejection of claim 1 above. In regards to claim 9, although it is not explicitly taught that the container holds the hose and supporting structure when the system is in storage, as discussed in the rejection above, the structure of the container 18 of Moon is *capable* of holding the hose and the support structure of Revette within its interior. The claim recites that the “system is **configured** so that when the system is in storage....” which is functional language. As the structure taught by the prior art meets all of the claimed structural limitations and is capable of performing the claimed function, there is no patentable distinction in structure between that claimed and that taught by the prior art (see MPEP §2111.04).

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In regards to claim 7, applicant argues that the handle of Jost does not meet the claim limitation of having a middle plate connected to the support members. This is not found persuasive, as when the structure of Gawlik is modified to include the handle of Jost, this handle can be defined as a type of plate. There is no further structural limitations claimed to distinguish the middle plate, and therefore the structure of the handle reads on the structure claimed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARIA E. DOUKAS whose telephone number is (571)270-5901. The examiner can normally be reached on Monday - Friday 7:30 AM - 5:00 PM EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571)272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MD

/Kevin C. Sirmons/

Supervisory Patent Examiner, Art Unit 3767